HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
and
HON'BLE SHRI JUSTICE G.V.SEETHAPATHY

W.A.NO.884 OF 2006

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Between:
Abdul Irfan Amoodi

..... Appellant

AND

The A.P. Housing Board,
Rep by its Chairman,
Gruhakalpa,
M.J.Road, Hyderabad.
and 3 others.

.....Respondents

::JUDGMENT::

Counsel for the Appellant : Sri Nazir Ahmed Khan

Counsel for Respondent Nos.1 to 4 : Sri J.Prabhakar

Standing counsel for APHB

Dated 23/8/2006

Per G.S.Singhvi, C.J.

Whether offer made by the then Vice-Chairman of the Andhra Pradesh Housing Board (for short 'the Board') to the appellant for sale of 68.19 square yards of the Board's land situated in Afzal Gunj, Hyderabad, which was unauthorisedly occupied by him can be enforced by issue of a writ of mandamus is the question which arises for determination in this appeal filed under Clause 15 of Letters Patent for setting aside order dated 25.1.2006 passed by the learned Single Judge in Writ Petition No.28064 of 2005.

The appellant is unauthorisedly occupying the land in question and has raised some construction over it. By taking advantage of communication dated 01.09.2003 sent by the then Vice-Chairman of the Board-cum-Housing Commissioner proposing to sell the land in question to the appellant at the rate of Rs.20,000/- per square yard, the latter filed Writ Petition No.28064 of 2005 with the prayer that the Board and its functionaries may be directed to sell the land in terms of communication dated 01.09.2003. In the affidavit filed by him, the appellant pleaded that in the past the Board has sold land at a fixed price to various unauthorised occupants and, therefore, he is entitled to purchase the land at the rates offered by the then Vice-Chairman.

In the counter affidavit filed on behalf of the Board by Sri K.Dharma Reddy, Officer on Special Duty, the following averments were made:

(i) that vide notice No.3/J5/1985, dated 05.05.2003, the writ petitioner (appellant herein) was called upon to hand over vacant possession of the land with an indication that if he fails to do so, action will be taken under Sections 52 and 53 of the

Andhra Pradesh Housing Board Act, 1956 (for short, 'the Act'). But subsequently, an offer was made to him for sale of the land at the rate of Rs.20,000/- per square yard.

(ii) That similar offers were made to Mohammed Ismail and Mohammed Saifulla, who had occupied 82.16 square yards and 75 square yards of land respectively. However, before the offers could be finalised, non-official members of the Board made a request to the Government to re-consider its decision to transfer the land to unauthorised occupants. At that stage, Saifulla filed Writ Petition No.3499 of 1978, which was dismissed by the High Court. Writ Appeal filed by him was also dismissed. However, on further appeal, the Supreme Court, passed order dated 31.07.1982 whereby the Board was directed to sell the land to Saifulla and Mohammed Ismail respectively.

(iii) That in compliance of the Supreme Court's order, the State Government issued G.O.Ms.No.44, dated 27.04.2000 permitting sale of two parcels of land to Saifulla and Mohammed Ismail. Accordingly, sale letter dated 12.06.2000 was issued in favour of Mohammed Saifulla and sale memo dated 29.11.2000 was issued in favour of Mohammed Hussain, legal heir of late Mohammed Ismail, but, neither of them deposited the price.

(iv) That in the meanwhile, Deputy Executive Engineer (Lands) inspected the site and found that legal heir of late Mohammed Ismail was trying to sell the land to third party namely, Abdul Irfan, who had already erected a tin shed over a portion of the land.

(v) That on receipt of the report of the Deputy Executive Engineer (Lands), the Board decided to file petition for eviction

of unauthorised occupants.

The appellant filed rejoinder reiterating his claim. He strongly relied on order dated 23.02.1999 passed by the Supreme Court in Mohammed Ismail's case and pleaded that similar treatment be meted out to him.

The learned Single Judge opined that no public authority can be compelled to sell its land or property to a citizen except by way of public auction to ensure transparency in the transaction and to garner maximum price. The learned Single Judge further observed that any other method of disposal of the public property would be arbitrary.

Sri Nazir Ahmed Khan, learned counsel for the appellant made strenuous efforts to persuade us to entertain his client's prayer for issue of a direction to the Board and its functionaries to take action in furtherance of notice dated 01.09.2003 and to execute sale deed in his favour, but we have not felt persuaded to agree with him. Rather, we are convinced that the appellant is not entitled to any relief under Article 226 of the Constitution of India.

In the last 60 years, the country has witnessed a spree of land grabbing in almost all urban cities. The enormity and extent of the land available at the disposal of the public authorities makes it virtually impossible for them to keep control and prevent encroachments and land grabbing. By taking advantage of the inability of the public authorities to ensure protection of the public properties, people like the appellant grab the land and then manipulate the executive apparatus of the State and officers of the public authorities to enter into unholy transaction of regularization of their possession by giving offer of a particular price. There have been thousands and thousands of cases in which various vested interests have succeeded in grabbing the public land and getting the unauthorized encroachments regularized in the name of policies framed by the Government. The courts are also burdened

with litigation by the land grabbers and encroachers who question the action taken by the public authorities to re-claim possession of the public properties. Some of the decisions rendered by the Courts, including the famous judgment in **Olga Tellis v. Bombay Municipal Corporation**[1] have been widely misused by those who take law into their hands and grab public properties for seeking protection of illegal encroachments of public lands by invoking Articles 14 and 21 of the Constitution of India and rules of audi alteram partem. After thirteen years of the aforementioned judgment, the Supreme Court in **M.I. Builders Pvt. Ltd. v. Radhey Shyam Sahu**[2] considered the issue of grant of relief to those who make unauthorised construction and observed:

> "This Court in numerous decisions has held that no consideration should be shown to the builder or any other person where construction is unauthorized. This dicta is now almost bordering the rule of law. Stress was laid by the appellant and the prospective allottees of the shops to exercise judicial discretion in moulding the relief. Such a discretion cannot be exercised which encourages illegality or perpetuates an illegality. Unauthorized construction, if it is illegal and cannot be compounded, has to be demolished. There is no way out. Judicial discretion cannot be guided by expediency. Courts are not free from statutory fetters. Justice is to be rendered in accordance with law. Judges are not entitled to exercise discretion wearing the robes of judicial discretion and pass orders based solely on their personal predilections and peculiar dispositions. Judicial discretion wherever it is requires to be exercised has to be in accordance with law and set legal principles."

In **Seema Arshad Zaheer v. Municipal Corporation of Greater Mumbai**[3], the Supreme Court considered various judicial precedents on the subject and held that the Courts should not protect the possession of those who grab public lands or make encroachment without any semblance of right. Some of the propositions laid down in that case read as under:

1) The discretion of the Court is exercised to grant a temporary injunction only when the following requirements are made out by the plaintiff: (i) existence of a prima facie case as pleaded, necessitating protection of plaintiff's rights by issue of a temporary injunction; (ii) when the need for protection of plaintiff's rights is compared with or weighed against the need for protection of defendant's rights or likely infringement of defendant's rights, the balance of convenience tilting in favour of plaintiff; and (iii) clear possibility of irreparable injury being caused to plaintiff if the temporary injunction is not granted. In addition, temporary injunction being an equitable relief, the discretion to grant such relief will be exercised only when the plaintiff's conduct is free from blame and he approaches the court with clean hands.

2) It is true that in cases relating to orders for demolition of buildings, irreparable loss may occur if the structure is demolished even before trial, and an opportunity to establish by evidence that the structure was authorized and not illegal. In such cases, where prima facie case is made out, the balance of convenience automatically tilts in favour of plaintiff and a temporary injunction will be issued to preserve status quo. But where the plaintiffs do not make out a prima facie case for grant of an injunction and the documents produced clearly show that the structures are unauthorized, the court may not grant a temporary injunction merely on the ground of sympathy or hardship. To grant a temporary injunction, where the structure is clearly unauthorized and the final order passed by the Commissioner (of the Corporation) after considering the entire material directing demolition, is not shown to suffer from any infirmity, would be to encourage and perpetuate an illegality. We may refer to the following observations of this Court in **M.I. Builders Pvt. Ltd. v. Radhey Shyam Sahu {(1999) 6 SCC 464}** made in a different context:

(The relevant portion has already been extracted above)

3) Where the lower court acts arbitrarily, capriciously or perversely in the exercise of its discretion, the appellate court will interfere. Exercise of discretion by granting a temporary injunction when there is 'no material', or refusing to grant a temporary injunction by ignoring the relevant documents produced, are instances of action which are termed as arbitrary, capricious or perverse. When we

refer to acting on 'no material' (similar to 'no evidence'), we refer not only to cases where there is total dearth of material, but also to cases where there is no relevant material or where the material, taken as a whole, is not reasonably capable of supporting the exercise of discretion. In this case, there was 'no material' to make out a prima facie case and therefore, the High Court in its appellate jurisdiction, was justified in interfering in the matter and vacating the temporary injunction granted by the trial court."

In Writ Petition No.16280 of 1996 (**S.V.Ramana v. The District Collector, West Godavari, Eluru and two others**) decided on 21.06.2006, one of us (the Chief Justice) considered the question whether the court should protect possession of the land grabber, and made the following observations:

"The mere fact that the concerned public authorities did not take action for removing the unauthorised encroachment made by the petitioner for some years or that the authorities of Municipal Corporation, Eluru have assessed the building for the purpose of levy of property tax and have accepted the amount deposited by him cannot enure to the petitioner's advantage and justify issue of a writ by the High Court to protect his illegal occupation of public land. The Court can take judicial notice of the fact that in majority of the cases of public lands and illegal occupation thereof, the public authorities turn blind eye. Seldom they take steps and remove the encroachments. During the interregnum, the encroachers succeed in colluding with the ministerial staff of the public bodies and authorities and deposit some amount in order to create evidence for seeking protection of their illegal occupation."

In the light of the above, we shall now consider whether the learned Single Judge committed any error by refusing to entertain the appellant's prayer and whether the Court should issue a mandamus to the Board and its functionaries to execute sale deed in his favour.

A careful scrutiny of the record shows that the then Vice-Chairman of the Board had made offer to the appellant for sale of land in blatant violation

of the mandate of Rule 29 of the Andhra Pradesh Housing Board Rules,1959 (for short, 'the Rules'), which provide that the Board may lease or sell any land or building vesting in it and situated in the area comprised in any housing scheme sanctioned under this Act, subject to the following conditions, namely:-

i) The transfer by sale or lease shall be by public auction.

ii) A notice of the proposed sale or lease of the property shall be published in the Andhra Pradesh Gazette, and in not less than two prominent newspapers, one in English and the other in the Chief language of the locality.

iii) The sale shall be conducted subject to such terms and conditions as may be fixed by the Board from time to time.

iv) The property that may be sold or leased shall be transferred through a conveyance deed that may be drawn up by the Board in consultation with its legal adviser.

Proviso to Rule 29 of the Rules empowers the Board to dispense with the above procedure in regard to sale and lease of any land or building with the concurrence of Government. Second proviso to this Rule postulates relaxation of conditions (i) and (ii) in respect of temporary lease of any land for a period not exceeding one year and revising a rent not exceeding Rs.250/- p.m.

An analysis of the plain language of Rule 29 of the Rules makes it clear that except in the case of a policy having been framed by the Board with the concurrence of the Government, no transaction of lease or transfer of the land of the Board can be effected except by way of public auction to be conducted after issuing proper advertisement in the official gazette and two prominent newspapers. The procedure envisaged by Rule 29 is meant to ensure that all eligible persons are able to participate in the auction of the land and the Board is able to garner maximum price. Any other procedure is, ordinarily, fraught with the danger of being abused misused for personal gains and the same is likely to encourage favouritism and nepotism.

Therefore, we do not see any justification, legal or otherwise, to sanctify the offer made by the then Vice-Chairman of the Board to the appellant because it is an undisputed position that before making offer to the appellant for sale of land, the then Vice-Chairman of the Board-cum-Housing Commissioner did not follow the procedure prescribed under Rule 29 of the Rules.

As a corollary to the above, we hold that the offer made to the appellant vide letter dated 01.09.2003 was nullity and the learned Single Judge did not commit any error by refusing to entertain the appellant's prayer.

The argument of the learned counsel that in the past the Board has effected several transfers otherwise than by way of public auction and, therefore, similar direction should be given in the appellant's case is being mentioned by us only to be rejected because it is settled law that Article 14 cannot be invoked for compelling a public authority to commit an illegality or pass an illegal order merely because in some other case, the said public authority has committed illegality or passed an illegal order. This proposition must be treated as settled by the decisions of the Supreme Court in **Chandigarh Administration v. Jagjit Singh**[4], **Jaipur Development Authority v. Daulat Mal Jain**[5], **Gursharan Singh v. New Delhi Municipal Committee**[6], **Faridabad CT Scan Centre v. D.G. Health Services**[7], **Style (Dress Land) v. Union Territory, Chandigarh**[8] and **State of Bihar v. Kameshwar Prasad Singh**[9].

The facts of **Jagjit Singh's** case (supra) were that the respondents who had given the highest bid for 338 square yards plot in Section 31A, Chandigarh defaulted in paying the price in accordance with the terms and conditions of allotment. After giving him opportunity of showing cause, the Estate Officer cancelled the lease of the plot. The appeal and the revision filed by him were dismissed by the Chief Administrator and Chief

Commissioner, Chandigarh respectively. Thereafter, the respondent applied for refund of the amount deposited by him. His request was accepted and the entire amount paid by him was refunded. He then filed a petition for review of the order passed by the Chief Commissioner, which was dismissed. However, the officer concerned entertained the second review and directed that the plot be restored to the respondent. The latter did not avail benefit of this unusual order and started litigation by filing writ petition in the High Court, which was dismissed on March 18, 1991. Thereafter, the respondent again approached the Estate Officer with the request to settle his case in accordance with the policy of the Government to restore the plots to the defaulters by charging forfeiture amount of 5%. His request was rejected by the Estate Officer. He then filed another writ petition before the High Court which was allowed only on the ground that in another case pertaining to Smt. Prakash Rani, Administrator had restored the plot even after her writ petition was dismissed by the High Court. The Chandigarh Administration challenged the order of the High Court by filing petition for special leave to appeal. While reversing the order of the High Court, their Lordships of the Supreme Court observed as under:

> "We are of the opinion that the basis or the principle, if it be called one, on which the writ petition has been allowed by the High Court is unsustainable in law and indefensible in principle. Since we have come across many such instances, we think it necessary to deal with such pleas at a little length. Generally speaking, the mere fact that the respondent-authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the petitioner on the plea of discrimination. The order in favour of the other person might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of the petitioner. If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made

the basis of issuing a writ compelling the respondent-authority to repeat the illegality or to pass another unwarranted order. The extraordinary and discretionary power of the High Court cannot be exercised for such a purpose. Merely because the respondent-authority has passed one illegal/unwarranted order, it does not entitle the High Court to compel the authority to repeat that illegality over again and again. The illegal/unwarranted action must be corrected, if it can be done according to law indeed, wherever it is possible, the court should direct the appropriate authority to correct such wrong orders in accordance with law – but even if it cannot be corrected, it is difficult to see how it can be made a basis for its repetition. By refusing to direct the respondent-authority to repeat the illegality, the Court is not condoning the earlier illegal act/order nor can such illegal order constitute the basis for a legitimate complaint of discrimination. Giving effect to such pleas would be prejudicial to the interests of law and will do incalculable mischief to public interest. It will be a negation of law and the rule of law. Of course, if in case the order in favour of the other person is found to be a lawful and justified one it can be followed and a similar relief can be given to the petitioner if it is found that the petitioner's case is similar to the other person's case. But then why examine another person's case in his absence rather than examining the case of the petitioner who is present before the court and seeking the relief. It is not more appropriate and convenient to examine the entitlement of the petitioner before the court to the relief asked for in the facts and circumstances of his case than to enquire into the correctness of the order made or action taken in another person's case, which other person is not before the Court nor is his case. In our considered opinion, such a course – barring exceptional situations – would neither be advisable nor desirable. In other words, the High Court cannot ignore the law and the well-accepted norms governing the writ jurisdiction and say that because in one case a particular order has been passed or a particular action has been taken, the same must be repeated irrespective of the fact whether such an order or action is contrary to law or otherwise. Each case must be decided on its own merits, factual and legal, in accordance with relevant

legal principles. The orders and actions of the authorities cannot be equated to the judgments of the Supreme Court and High Courts nor can they be elevated to the level of the precedents, as understood in the judicial world. (What is the position in the case of orders passed by authorities in exercise of their quasi-judicial power, we express no opinion. That can be dealt with when a proper case arises)."

In **Secretary, Jaipur Development Authority v. Daulat Mal Jain** (supra), the Supreme Court held as under:

"The illegal allotment founded upon ultra vires and illegal policy of allotment made to some other persons wrongly, would not form a legal premise to ensure it to the respondent or to repeat or perpetuate such illegal order, nor could it be legalized. In other words, judicial process cannot be abused to perpetuate the illegalities. Article 14 proceeds on the premise that a citizen has legal and valid right enforceable at law and persons having similar right and persons similarly circumstanced, cannot be denied of the benefit thereof. Such person cannot be discriminated to deny the same benefit. The rational relationship and legal back-up are the foundations to invoke the doctrine of equality in case of persons similarly situated. If some persons derived benefit by illegality and had escaped from the clutches of law, similar persons cannot plead, nor the Court can countenance that benefit had from infraction of law and must be allowed to be retained. One illegality cannot be compounded by permitting similar illegal or illegitimate or ultra vires acts."

In **Gursharan Singh v. New Delhi Municipal Committee** (supra), the Supreme Court refused to invoke Article 14 of the Constitution of India for giving relief to the appellant and observed:

"Under Article 14 guarantee of equality before law is a positive concept and it cannot be enforced by a citizen or court in a negative manner. If an illegality or irregularity has been committed in favour of any individual or a group of individuals, others cannot invoke the jurisdiction of the High Court or of the

Supreme Court, that the same irregularity or illegality be committed by the State or an authority which can be held to be a State within the meaning of Article 12 of the Constitution, so far such petitioners are concerned, on the reasoning that they have been denied the benefits which have been extended to others although in an irregular or illegal manner. Such petitioners can question the validity of orders which are said to have been passed in favour of persons who were not entitled to the same, but they cannot claim orders which are not sanctioned by law in their favour on principle of equality before law."

In **Faridabad CT. Scan Centre v. D.G. Health Services** (supra), the three Judges Bench of the Supreme Court overruled the earlier decision of the two Judges Bench and held:

"Article 14 cannot be invoked in cases where wrong orders are issued in favour of others. Wrong orders cannot be perpetuated with the help of Article 14 on the basis that such wrong orders were earlier passed in favour of some other persons and that, therefore, there will be discrimination against others if correct orders are passed against them. The benefit of the exemption notification, in the present case, cannot, therefore, be extended to the petitioner on the ground that such benefit has been wrongly extended to others. "

In **State of Bihar v. Kameshwar Prasad Singh** (supra), the Supreme Court held as under:

"The concept of equality as envisaged under Article 14 of the Constitution is a positive concept which cannot be enforced in a negative manner. When any authority is shown to have committed any illegality or irregularity in favour of any individual or group of individuals, others cannot claim the same illegality or irregularity on the ground of denial thereof to them. Similarly wrong judgment passed in favour of one individual does not entitle others to claim similar benefits."

By applying the ratio of the aforementioned judgments to the facts of this case, we hold that the plea of discrimination raised by the appellant is meritless and is liable to be rejected.

The order passed by the Supreme Court in the cases of Saifulla and Mohammed Ismail is of no help to the appellant because the same was based on G.O.Ms.No.7, dated 28th May, 1977. In that case, the Supreme Court did not consider Rule 29 of the Rules, which, as mentioned above, lays down that the land should be sold by way of public auction.

In the result, the appeal is dismissed.

G.S.SINGHVI, CJ

G.V.SEETHAPATHY,J

Dt.23.8.2006
Msv.

Note:LR copy be marked.
(BO)
ARS
PS TO HCJ.

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[1] AIR 1986 SC 180
[2] (1999) 6 SCC 464
[3] JT 2006 (11) SC 1
[4] AIR 1995 SC 705
[5] (1997) 1 SCC 35
[6] (1996) 2 SCC 459
[7] (1997) 7 SCC 752
[8] (1999) 7 SCC 89
[9] (2000) 9 SCC 94